IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15852 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE MR SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgement ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copyu of the judgement ?
4	Whether this case involves a substantial question of law as to the interpretation of the constituition of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judgte ?

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SHENA DARIYA GORADA GRAM PANCHAYAT &2 - Petitioner(s)

Versus

LAXMANBHAI DALABHAI CHOKIYAT - Respondent(s)

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Appearance :

MR SUNIL S JOSHI for Petitioner No(s).: 1,2.

MR UM SHASTRI for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE MR SHAH

Date : 15/06/2005

ORAL JUDGMENT

Rule. Shri UM Shastri, learned advocate waives service of Rule on behalf of respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constituition of India, the petitioner Gram Panchayat
and Talati-cum-Mantri have challenged the legality and validity of the order passed by the Presiding Officer of the Labour Court, Godhra, dated 11.2.2003 in Recovery Application No. 147 of 2000 directing the petitioners to pay an amount of Rs. 60,225 towards difference under Minimum Wages Act for the period between 20th August 1996 and 31st March 2000.

3. It appears from the record that the respondent workman was serving with the petitioner as Watchman and according to him he was not paid the minimum wages. Therefore he has moved recovery application under Section 33(c)(2) of the Industrial Disputes Act, 1947 being Recovery Application No. 147 of 2000 for getting difference in the salary as per the Minimum Wages Act for the period from 20thAugust 1996 to 31st March 2000. The said application was opposed by the petitioners and it was submitted that the respondent workman was serving as Watchman only for 2 hours in a day; he was not on regular establishment; every day he was to work from 9.00 AM to 10.00 AM and from 4.00 PM to 5.00 PM only; therefore he was not entitled to the salary as if he is a permanent employee working for 8 hours;and therefore it was requested to dismiss the recovery application. It was also submitted that there is no pre-existing right and/or any award in favour of the applicant who is original-claimant and therefore the application under Section 33(c)(2) of the Act is not maintainable. Inspite of the aforesaid facts and circumstances of the case the Labour Court, Godhra, by order dated 11.2.2003 allowed the said application and directed the petitioners to pay an amount of Rs. 60,225 being the difference in salary as per the Minimum Wages Act for the period from 20th August 1996 to 31stMarch 2000, which is the matter of the present Special Civil application.

4. It is submitted on behalf of the petitioners that in absence of any pre-existing right in favour of the respondent which entitles the respondent workman to get the salary as a permanent employee the application under Section 33(c)(1) of

the Act is not maintainable. It is submitted that the appropriate remedy for the respondent workman was to first get his rights established under Section 10 of the Act by raising an industrial dispute and only thereafter application for recovery is maintainable. It is also further submitted that the claim of the petitioners in the Recovery Application as per the Minimum Wages Act not being within 6 months the same was barred by limitation in view of Section 20 of the Minimum Wages Act. Therefore it is requested to allow the present Special Civil Application by quashing and setting aside the order passed in Recovery Application.

4.1. In support of his aforesaid submission the learned advocate has relied upon the judgement of this Court in the case of State of Gujarat &Another Vs. Bachubhai Govabhai, reported in 2004(3) G.L.R. Page 2382. Reliance is also placed on the Judgement delivered by the learned Single Judge of this Court State of Gujarat &Anr. vs. Devabhai Tapubhai, reported in 2004(3) GLR Page 2394. Reliance is also placed on the judgment of this Court in the case of Panchmahal District Panchayat And Another Vs. Salambhai Barabhai Parmar and Another, reported in 2004(3) G.L.H. Page 309.Further reliance is placed upon the judgment of the Division Bench of this Court in the case of Gujarat Water Supply and Sewerage Board and Anr. Vs. Ketanbhai Dinkarray Pandya, reported in 2003(3) G.L.H. Page 261 and it is submitted that the Division Bench has held that " Under S. 33-C(2) the Labour Court acts only as an executing court and therefore there has to be an undisputed or adjudicated existing right and a claim which is yet to be adjudicated either by a competent authority under the Minimum Wages Act or by a Labour Court under S. 10 cannot be entertained in a Recovery Application."

5. Heard the learned advocates for the parties. Considering the provisions of Section 33(c)(2), this Court in the aforesaid judgments as well as in other catena of judgments has held that the jurisdiction of the Labour Court under Section 33(c)(2) can be exercised only when the rights of the workman are crystalised in favour of the workman either by virtue of settlement or order and in absence of adjudication of such rights no order can be made. Applying the ratio laid down by this Court in the aforesaid three judgments and consiidering the provisions of Section 33(c)(2) and taking into account the facts of the present case in absence of

crystalization of any pre-existing right in favour of the workman, the Labour Court, Godhra ought not to have passed the order directing the petitioners to pay the amount of Rs. 60,225. Whether the respondent workman was a daily wager, and/or working for only one hour or two hours in a day, and/or a permanent employee, and whether he is entitled to the salary under the Minimum Wages Act are all questions which are required to be dealt with by appropriate Court in a Reference under Section 10 of the Industrial Disputes Act, and unless and until the rights are crystalised in favour of the respondent workman holding that he is entitled to salary as per the Minimum Wages Act, the application under Section 33(c)(2) is not maintainable at all. In the facts and circumstances and on consideration of the aforecited three judgments, the impugned order passed by the Labour Court, Godhra, cannot be sustained and is required to be quashed and set aside and is accordingly quashed and set aside.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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